

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. ER05-652-004
RT04-1-016
ER05-109-003
ER04-48-016

ORDER ON COMPLIANCE FILING

(Issued January 11, 2006)

1. This order addresses Southwest Power Pool, Inc.'s (SPP's) compliance filing to the Commission's order issued in this proceeding on September 20, 2005.¹ The compliance filing modifies provisions of SPP's Open Access Transmission Tariff (OATT) relating to allocation of costs of new and/or upgraded transmission facilities and, in particular, provisions regarding credits to be paid to customers to whom such costs were originally allocated. As discussed below, we will conditionally accept SPP's compliance filing, make it effective May 5, 2005, and direct a further compliance filing.

Background

2. SPP has been authorized as a regional transmission organization (RTO) since October 1, 2004.² In the Commission's initial order addressing SPP's RTO application, we directed SPP to develop and file a regional transmission cost allocation plan (cost allocation plan) with regard to new transmission upgrades by the end of 2004.³

¹ *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,319 (2005) (September 20 Order).

² *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004) (October 1 Order), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

³ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004) (February 10 Order), *order on reh'g*, 109 FERC ¶ 61,010 (2005).

3. On October 29, 2004, in Docket No. ER05-109-000, SPP submitted proposed tariff revisions in order to provide an aggregate transmission service study process to evaluate long-term transmission service requests and included as part of that filing limited cost allocation and cost recovery provisions. The proposed changes were set forth in Attachment Z (Aggregate Transmission Study Procedures) to SPP's OATT. Noting concerns about the interrelationship between Attachment Z and the fully developed transmission cost allocation plan that SPP would soon file, the Commission accepted the proposed aggregate transmission study procedures to become effective February 1, 2005, but accepted and suspended SPP's proposed cost allocation and cost recovery provisions to become effective the earlier of five months from the requested effective date (July 1, 2005) or a further order by the Commission, subject to refund.⁴
4. On February 28, 2005, SPP submitted its complete cost allocation plan, reflected in a new section V (Recovery of Costs for Base Plan Upgrades) to SPP's OATT and proposed revisions to Attachment J (Recovery of Costs Associated with New Facilities), Schedule 11 (Base Plan Charges) and Attachment Z. On April 22, 2005, the Commission conditionally accepted tariff revisions proposed by SPP in order to implement a cost allocation plan.⁵
5. Several of the parties to the proceeding, including SPP, sought rehearing of the April 22 Order. Also, on May 23, 2005, SPP submitted a compliance filing in Docket No. ER05-109-000 related to Attachment Z. In its September 20 Order, the Commission granted in part and denied in part rehearing of its April 22 Order, and conditionally accepted SPP's compliance filing and directed a further compliance filing.
6. On October 20, 2005, SPP submitted revisions and clarifications to its OATT pursuant to the directives of the September 22 Order.

Notice of the Filing and Responsive Pleadings

7. Notice of SPP's compliance filing was published in the *Federal Register*,⁶ with interventions, comments and protests due on or before November 10, 2005. The Southwest Industrial Customer Coalition (Southwest Industrial) filed a motion to intervene. Missouri Joint Municipal Electric Utility Commission, Oklahoma Municipal Power Authority, and West Texas Municipal Power Agency (collectively, TDU Intervenors) filed a timely protest. Lafayette Utilities System (LUS) sought to file comments out of time on November 21, 2005 and supplemented its comments with a

⁴ *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,028 (2005) (January 21 Order).

⁵ *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 (2005) (April 22 Order).

⁶ 70 Fed. Reg. 66,830 (2005).

“statement of issues” pursuant to Order No. 663.⁷ LUS states that its comments are late because it received confirmation from SPP after the comment date had passed that no dispute exists as to intent of the phrase “subsequent incremental use” in subpart 2 (Network Transmission Service) of section VII (Transmission Service Crediting) of Attachment Z.

Procedural Matters

8. As noted in the Federal Register notice, it is not necessary for a party to separately intervene again in a subdocket related to a compliance filing, if it has previously intervened in the same docket. We note that Southwest Industrial already has intervenor status based on its earlier intervention in this proceeding. We also accept LUS’s late-filed comments because it provided information that assisted us in our decision-making process and no party protests LUS’s interpretation of the provision in question.

Discussion

September 20 Order

9. In the September 20 Order, the Commission directed SPP to make the following revisions and clarifications to its OATT: (a) remove a provision that included fuel diversity in the nonexhaustive list of waiver criteria pursuant to which a transmission customer may seek a waiver from SPP of all or part of the Base Plan⁸ criteria in order to qualify for Base Plan treatment;⁹ (b) add a provision to Attachment Z clarifying that the right of first refusal of SPP’s transmission owners to assume the cost responsibility for any or all upgrades to their facilities which they construct to provide transmission service is a cost allocation mechanism, not an ownership mechanism;¹⁰ (c) remove the phrase “a portion of” from section VII of Attachment Z, and clarify subpart 1 (Point-to-Point Transmission Service) of section VII to provide credits for transmission service reservations made prior to the completion of the network upgrades with service

⁷ Order No. 663, Revision of Rules of Practice and Procedure Regarding Issue Identification, 112 FERC ¶ 61,297 (2005).

⁸ We note that capitalized terms not otherwise defined herein are defined in the OATT.

⁹ September 20 Order at P 19 (While SPP was directed to delete from the list of waivers the fuel diversity waiver, we noted that SPP could refile the fuel diversity waiver provision if it provided further support).

¹⁰ *Id.* at P 48.

commencing after the upgrades are placed in service;¹¹ (d) clarify section VII, subpart 2 (Network Transmission Service) of Attachment Z to ensure the crediting provision captures any increase in existing network resource designation by a transmission customer;¹² and (e) revise the calculation in subparts 2 and 3 (Power Controlling Devices) of section VII of Attachment Z to be consistent with the calculation used to determine the cost responsibility for the upgrade or support fully its proposal, clarify how these provisions will function, and include the phrase "or applied to rates" in subpart 3.¹³

SPP's Compliance Filing

10. SPP proposes to delete the fuel diversity provision from the list of waiver criteria in Attachment J of its OATT. SPP also notes that it removed the right of first refusal provision from Attachment Z in its May 23 Compliance Filing and therefore, no further revisions are necessary.

11. SPP has removed the phrase "a portion of" from the first sentence of section VII of Attachment Z and revised the language to provide that transmission customers paying for a directly assigned network upgrade shall receive credits for new transmission service using the facility as specified in section VI (Cost Recovery). SPP has also revised the second sentence of Attachment Z to state that the credit amount will be recovered from new transmission service using the facility as defined in Attachment Z until the credit due is zero.

12. SPP also has made various revisions to section VII, subparts 1, 2 and 3 of Attachment Z. Subpart 1 has been modified so that, for each new point-to-point reservation having such loading impact on the new Network Upgrade, made after the request causing the need for such upgrade, with service commencing after the facility upgrade is completed, the customer shall receive a portion of the transmission service charge equal to the positive response factor of such new reservation on the Network Upgrade facility times the new reservation capacity times the rate applicable to such new reservation.

13. Subpart 2 has been revised to state that credits will be provided for Long-Term Network Transmission Service using the Network Upgrade in the direction of the initial overload to accommodate designation of new Network Loads, new Designated Resources or increases in the designation of existing Designated Resources above previously

¹¹*Id.* at P 70.

¹² *Id.* at P 71.

¹³ *Id.* at P 72.

designated levels. Furthermore, credits shall be determined based upon the subsequent incremental use of the Network Upgrade for such new or increased Network Load or Network Resource.

14. SPP has also added the following provisions to subpart 2. The annual credit amount to be billed and paid monthly by a Network Customer, or included in rates, for each such new or increased use will be the product of the annual revenue requirement associated with the Network Upgrade and the ratio of the incremental impact placed on the Network Upgrade by each such new or increased use to the total of the incremental impacts placed on the Network Upgrade by all currently and previously identified incremental Network Service and Long-Term Firm Point-to-Point uses of the Network Upgrade. The cost of such credit amount will be paid by the Network Service Customer making such new or increased use of the Network Upgrade, or included in rates pursuant to the Base Plan funding formula in Attachment J, in addition to all other applicable charges under the SPP Tariff.

15. SPP also added language providing that such credits will be given to all previously identified incremental Network Service and Long-Term Firm Point-to-Point uses, including prior incremental Network Service uses that resulted in the obligation to pay credits. The grant of such credits will be in proportion to the fraction of the annual revenue requirement associated with the Network Upgrade for which they are responsible, net of any credits previously applied.

16. Furthermore, SPP largely revised subpart 3. First, credits will be provided for Long-Term Network Transmission Service using power controlling devices in either direction to accommodate designation of new Network Loads, new Designated Resources or increases in the designation of existing Designated Resources above previously designated levels. Credits will be determined based upon the subsequent additional incremental use of the device by any such new or increased use.

17. Second, the annual credit amount to be billed and paid monthly by a Network Customer, or included in rates, for each such new or increased use will be the product of the annual revenue requirement associated with the device and the ratio of the incremental impact placed on the device by each such new or increased use to the total of the incremental impacts placed on the device by all currently and previously identified incremental Network Service and Long-Term Firm Point-to-Point uses of the device in both directions. The cost of such credit amount will be paid by the Network Service Customer making such new or increased use of the device, or included in rates pursuant to the Base Plan funding formula in Attachment J, in addition to all other applicable charges under the SPP OATT.

18. Third, such credits will be given to all previously identified incremental Network Service and Long-Term Firm Point-to-Point uses, including prior incremental Network Service uses that resulted in the obligation to pay credits. The grant of such credits will be in proportion to the fraction of the annual revenue requirement associated with the Network Upgrade for which they are responsible, net of any credits previously applied.

19. Finally, crediting for Long-Term Firm Point-to-Point Transmission Service using the power controlling device in either direction will be a portion of the transmission service charge equal to the positive response factor of such new reservation on the device times the new reservation capacity times the rate applicable to such new reservation less any revenue credits applicable to other Network Upgrades on the transmission path. Crediting for Short-Term Firm and Non-Firm Point-to-Point Transmission Service using the device in either direction will be the percent usage of the total revenue received by the Transmission Provider that is not required for other transmission funding obligations.

Protest and Comments

20. TDU Intervenors argue that SPP terminology improperly limits the source of credit revenues to subsequent use of Network Upgrades by Network Customers and Point to Point Customers. TDU Intervenors argue that the Commission found that the credits should also flow from charges to transmission owners who use the Network Upgrades for service to their retail and grandfathered loads under the “non-rate terms and conditions” of the SPP OATT.¹⁴ Noting that these transmission owners take network-like service but are not Network Customers as defined by SPP’s OATT, TDU Intervenors argue that SPP should be required to revise section VII of Attachment Z to make it expressly applicable to the use by transmission owners taking service under the non-rate terms and conditions of the tariff.

21. TDU Intervenors also argue that the September 20 Order directed SPP to modify the tariff to clarify the provision in section VII, subpart 1 to provide credits for point-to-point transmission service reservations made prior to the completion of the network upgrades or extending beyond the completion date with service commencing after the upgrades are placed in service. TDU Intervenors state that the compliance filing only addressed the situation where the service starts after the completion date, not the “extending beyond” possibility. Therefore, TDU Intervenors argue that SPP should be required to amend the language in subpart 1 to encompass this.

22. LUS argues that the use of the phrase “subsequent incremental use” is not intended to require SPP to regularly adjust the credit to reflect changing levels of customer usage of an upgrade. Rather, upon a network customer’s submission of its network service application to SPP for the new load or new resource (or increased use of

¹⁴ *Id.* at P 31.

an existing resource), SPP will determine the impact of the customer's service request on the upgrade at that time and establish the amount of credit on the basis of the customer's service request. LUS states that SPP agrees to this reading of the subsequent incremental use clause.

Commission Determination

23. As a general matter, we find that SPP has largely complied with the directives of the September 20 Order, however, we direct SPP to make the changes highlighted by the TDU Intervenor to fully comply with our order.

24. The Commission clarified in the September 20 Order that the reference in the April 22 Order to "subsequent network transmission service,"¹⁵ included "service taken by transmission owners under the non-rate terms and conditions of the SPP OATT."¹⁶ Also, the September 20 Order noted our expectation that SPP would "apply the cost allocations rules pertaining to network customers equally to all network transmission customers, including transmission owners taking service under the non-rate terms and conditions of the SPP OATT to avoid discrimination against one group of network service customers."¹⁷ We found that this was consistent with the Commission's earlier determination that comparability dictates that a transmission provider treat itself in the same manner as a customer that is taking the same service. Accordingly, we agree with TDU intervenors that SPP should revise section VII of Attachment Z to make it applicable to the use by transmission owners taking service under the non-rate terms and conditions of the tariff.

25. SPP was directed to clarify the provisions in section VII, subpart 1 to provide credits for point-to-point transmission service reservations made prior to completion of the network upgrades with service commencing after the upgrades are placed in service.¹⁸ We also noted that this included reservations that were made before the completion date, but started after or extended beyond the completion date. As TDU Intervenor note, SPP's edits include the reservations "starting after" the completion date but not the

¹⁵ April 22 Order at P 72.

¹⁶ September 20 Order at P 31.

¹⁷ *Id.* at P 35.

¹⁸ *Id.* at P 70.

reservations “extending beyond” the completion date. Accordingly, we direct SPP to further revise the second sentence of section VII, subpart 1 to incorporate the extending beyond option as an instance that would also provide revenues for crediting.¹⁹

26. No further changes are required to subpart 2 of section VII to address LUS’s concern with regard to the clause “subsequent incremental use,” but, based on SPP’s statements to LUS (which were not questioned by SPP here), we find that this clause is not intended to require SPP to regularly adjust the credit to reflect changing levels of customer usage of an upgrade.

27. We will conditionally accept SPP’s compliance filing, effective May 5, 2005, and direct SPP to make a further compliance filing as directed above to be filed within 30 days of the date of issuance of this order.

The Commission orders:

(A) SPP’s compliance filing is hereby conditionally accepted for filing, effective May 5, 2005, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing within 30 days of the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁹ The revised text would read “For each new point-to-point reservation having such loading impact on such Network Upgrade, made after the request causing the need for such upgrade, with service commencing after *or extending beyond...*”